

**ASSEMBLY BILL**

**No. 1363**

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**Introduced by Assembly Member Davis**

February 27, 2009

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An act to amend Section 12031 of the Penal Code, relating to concealed firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as introduced, Davis. Firearms.

Existing law establishes the offense of carrying a loaded firearm, as specified, and provides exceptions to those provisions, including an exception permitting the carrying of handguns by persons who are authorized to carry those weapons pursuant to provisions relating to licenses to carry concealed firearms.

This bill would revise the exception to permit the carrying of handguns by persons as authorized pursuant to provisions relating to licenses to carry concealed firearms.

By narrowing the exception to an offense, this bill would impose a state-mandated local program.

The bill would also delete obsolete language pertaining to reports to be filed by the Attorney General. The bill would make other technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

(A) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(B) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(C) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(D) Where the person is not in lawful possession of the firearm, as defined in this section, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(E) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(F) Where the person is not listed with the Department of Justice pursuant to Section 11106, as the registered owner of the ~~pistol, revolver, or other firearm capable of being concealed upon the person~~ *handgun*, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars (\$1,000), or both that fine and imprisonment.

(G) In all cases other than those specified in subparagraphs (A) to (F), inclusive, as a misdemeanor, punishable by imprisonment

1 in a county jail not to exceed one year, by a fine not to exceed one  
2 thousand dollars (\$1,000), or by both that imprisonment and fine.

3 (3) For purposes of this section, “lawful possession of the  
4 firearm” means that the person who has possession or custody of  
5 the firearm either lawfully acquired and lawfully owns the firearm  
6 or has the permission of the lawful owner or person who otherwise  
7 has apparent authority to possess or have custody of the firearm.  
8 A person who takes a firearm without the permission of the lawful  
9 owner or without the permission of a person who has lawful  
10 custody of the firearm does not have lawful possession of the  
11 firearm.

12 (4) Nothing in this section shall preclude prosecution under  
13 Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of  
14 the Welfare and Institutions Code, or any other law with a greater  
15 penalty than this section.

16 (5) (A) Notwithstanding paragraphs (2) and (3) of subdivision  
17 (a) of Section 836, a peace officer may make an arrest without a  
18 warrant:

19 (i) When the person arrested has violated this section, although  
20 not in the officer’s presence.

21 (ii) Whenever the officer has reasonable cause to believe that  
22 the person to be arrested has violated this section, whether or not  
23 this section has, in fact, been violated.

24 (B) A peace officer may arrest a person for a violation of  
25 subparagraph (F) of paragraph (2), if the peace officer has probable  
26 cause to believe that the person is carrying a loaded ~~pistol, revolver,~~  
27 ~~or other firearm capable of being concealed upon the person~~  
28 *handgun* in violation of this section and that person is not listed  
29 with the Department of Justice pursuant to paragraph (1) of  
30 subdivision (c) of Section 11106 as the registered owner of that  
31 ~~pistol, revolver, or other firearm capable of being concealed upon~~  
32 ~~the person~~ *handgun*.

33 (6) (A) Every person convicted under this section who has  
34 previously been convicted of an offense enumerated in Section  
35 12001.6, or of any crime made punishable under this chapter, shall  
36 serve a term of at least three months in a county jail, or, if granted  
37 probation or if the execution or imposition of sentence is  
38 suspended, it shall be a condition thereof that he or she be  
39 imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(7) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

1 No endorsement or renewal endorsement issued pursuant to  
2 paragraph (2) shall be effective unless it is in the format set forth  
3 in subparagraph (D) of paragraph (1) of subdivision (a) of Section  
4 12027, except that any peace officer listed in subdivision (f) of  
5 Section 830.2 or in subdivision (c) of Section 830.5, who is retired  
6 between January 2, 1981, and on or before December 31, 1988,  
7 and who is authorized to carry a loaded firearm pursuant to this  
8 section, shall not be required to have an endorsement in the format  
9 set forth in subparagraph (D) of paragraph (1) of subdivision (a)  
10 of Section 12027 until the time of the issuance, on or after January  
11 1, 1989, of a renewal endorsement pursuant to paragraph (2).

12 (2) A retired peace officer, except an officer listed in Section  
13 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision  
14 (c) of Section 830.5 who retired prior to January 1, 1981, shall  
15 petition the issuing agency for renewal of his or her privilege to  
16 carry a loaded firearm every five years. An honorably retired peace  
17 officer listed in Section 830.1 or 830.2, subdivision (a) of Section  
18 830.33, or subdivision (c) of Section 830.5 who retired prior to  
19 January 1, 1981, shall not be required to obtain an endorsement  
20 from the issuing agency to carry a loaded firearm. The agency  
21 from which a peace officer is honorably retired may, upon initial  
22 retirement of the peace officer, or at any time subsequent thereto,  
23 deny or revoke for good cause the retired officer's privilege to  
24 carry a loaded firearm. A peace officer who is listed in Section  
25 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision  
26 (c) of Section 830.5 who is retired prior to January 1, 1981, shall  
27 have his or her privilege to carry a loaded firearm denied or  
28 revoked by having the agency from which the officer retired stamp  
29 on the officer's identification certificate "No CCW privilege."

30 (3) An honorably retired peace officer who is listed in  
31 subdivision (c) of Section 830.5 and authorized to carry loaded  
32 firearms by this subdivision shall meet the training requirements  
33 of Section 832 and shall qualify with the firearm at least annually.  
34 The individual retired peace officer shall be responsible for  
35 maintaining his or her eligibility to carry a loaded firearm. The  
36 Department of Justice shall provide subsequent arrest notification  
37 pursuant to Section 11105.2 regarding honorably retired peace  
38 officers listed in subdivision (c) of Section 830.5 to the agency  
39 from which the officer has retired.

1 (4) Members of the military forces of this state or of the United  
2 States engaged in the performance of their duties.

3 (5) Persons who are using target ranges for the purpose of  
4 practice shooting with a firearm or who are members of shooting  
5 clubs while hunting on the premises of those clubs.

6 (6) The carrying of ~~pistols, revolvers, or other firearms capable~~  
7 ~~of being concealed upon the person~~ *handguns* by persons who are  
8 ~~as authorized to carry those weapons~~ pursuant to Article 3  
9 (commencing with Section 12050) of Chapter 1 of Title 2 of Part  
10 4.

11 (7) Armored vehicle guards, as defined in Section 7521 of the  
12 Business and Professions Code, (A) if hired prior to January 1,  
13 1977, or (B) if hired on or after that date, if they have received a  
14 firearms qualification card from the Department of Consumer  
15 Affairs, in each case while acting within the course and scope of  
16 their employment.

17 (8) Upon approval of the sheriff of the county in which they  
18 reside, honorably retired federal officers or agents of federal law  
19 enforcement agencies, including, but not limited to, the Federal  
20 Bureau of Investigation, the Secret Service, the United States  
21 Customs Service, the Federal Bureau of Alcohol, Tobacco, and  
22 Firearms, the Federal Bureau of Narcotics, the Drug Enforcement  
23 Administration, the United States Border Patrol, and officers or  
24 agents of the Internal Revenue Service who were authorized to  
25 carry weapons while on duty, who were assigned to duty within  
26 the state for a period of not less than one year, or who retired from  
27 active service in the state.

28 Retired federal officers or agents shall provide the sheriff with  
29 certification from the agency from which they retired certifying  
30 their service in the state, the nature of their retirement, and  
31 indicating the agency's concurrence that the retired federal officer  
32 or agent should be accorded the privilege of carrying a loaded  
33 firearm.

34 Upon approval, the sheriff shall issue a permit to the retired  
35 federal officer or agent indicating that he or she may carry a loaded  
36 firearm in accordance with this paragraph. The permit shall be  
37 valid for a period not exceeding five years, shall be carried by the  
38 retiree while carrying a loaded firearm, and may be revoked for  
39 good cause.

1 The sheriff of the county in which the retired federal officer or  
2 agent resides may require recertification prior to a permit renewal,  
3 and may suspend the privilege for cause. The sheriff may charge  
4 a fee necessary to cover any reasonable expenses incurred by the  
5 county.

6 (c) Subdivision (a) shall not apply to any of the following who  
7 have completed a regular course in firearms training approved by  
8 the Commission on Peace Officer Standards and Training:

9 (1) Patrol special police officers appointed by the police  
10 commission of any city, county, or city and county under the  
11 express terms of its charter who also, under the express terms of  
12 the charter, (A) are subject to suspension or dismissal after a  
13 hearing on charges duly filed with the commission after a fair and  
14 impartial trial, (B) are not less than 18 years of age or more than  
15 40 years of age, (C) possess physical qualifications prescribed by  
16 the commission, and (D) are designated by the police commission  
17 as the owners of a certain beat or territory as may be fixed from  
18 time to time by the police commission.

19 (2) The carrying of weapons by animal control officers or  
20 zookeepers, regularly compensated as such by a governmental  
21 agency when acting in the course and scope of their employment  
22 and when designated by a local ordinance or, if the governmental  
23 agency is not authorized to act by ordinance, by a resolution, either  
24 individually or by class, to carry the weapons, or by persons who  
25 are authorized to carry the weapons pursuant to Section 14502 of  
26 the Corporations Code, while actually engaged in the performance  
27 of their duties pursuant to that section.

28 (3) Harbor police officers designated pursuant to Section 663.5  
29 of the Harbors and Navigation Code.

30 (d) Subdivision (a) shall not apply to any of the following who  
31 have been issued a certificate pursuant to Section 12033. The  
32 certificate shall not be required of any person who is a peace  
33 officer, who has completed all training required by law for the  
34 exercise of his or her power as a peace officer, and who is  
35 employed while not on duty as a peace officer.

36 (1) Guards or messengers of common carriers, banks, and other  
37 financial institutions while actually employed in and about the  
38 shipment, transportation, or delivery of any money, treasure,  
39 bullion, bonds, or other thing of value within this state.

1 (2) Guards of contract carriers operating armored vehicles  
2 pursuant to California Highway Patrol and Public Utilities  
3 Commission authority (A) if hired prior to January 1, 1977, or (B)  
4 if hired on or after January 1, 1977, if they have completed a course  
5 in the carrying and use of firearms which meets the standards  
6 prescribed by the Department of Consumer Affairs.

7 (3) Private investigators and private patrol operators who are  
8 licensed pursuant to Chapter 11.5 (commencing with Section 7512)  
9 of, and alarm company operators who are licensed pursuant to  
10 Chapter 11.6 (commencing with Section 7590) of, Division 3 of  
11 the Business and Professions Code, while acting within the course  
12 and scope of their employment.

13 (4) Uniformed security guards or night watch persons employed  
14 by any public agency, while acting within the scope and course of  
15 their employment.

16 (5) Uniformed security guards, regularly employed and  
17 compensated in that capacity by persons engaged in any lawful  
18 business, and uniformed alarm agents employed by an alarm  
19 company operator, while actually engaged in protecting and  
20 preserving the property of their employers or on duty or en route  
21 to or from their residences or their places of employment, and  
22 security guards and alarm agents en route to or from their  
23 residences or employer-required range training. Nothing in this  
24 paragraph shall be construed to prohibit cities and counties from  
25 enacting ordinances requiring alarm agents to register their names.

26 (6) Uniformed employees of private patrol operators and private  
27 investigators licensed pursuant to Chapter 11.5 (commencing with  
28 Section 7512) of Division 3 of the Business and Professions Code,  
29 while acting within the course and scope of their employment.

30 (e) In order to determine whether or not a firearm is loaded for  
31 the purpose of enforcing this section, peace officers are authorized  
32 to examine any firearm carried by anyone on his or her person or  
33 in a vehicle while in any public place or on any public street in an  
34 incorporated city or prohibited area of an unincorporated territory.  
35 Refusal to allow a peace officer to inspect a firearm pursuant to  
36 this section constitutes probable cause for arrest for violation of  
37 this section.

38 (f) As used in this section, “prohibited area” means any place  
39 where it is unlawful to discharge a weapon.



1 (g) A firearm shall be deemed to be loaded for the purposes of  
2 this section when there is an unexpended cartridge or shell,  
3 consisting of a case that holds a charge of powder and a bullet or  
4 shot, in, or attached in any manner to, the firearm, including, but  
5 not limited to, in the firing chamber, magazine, or clip thereof  
6 attached to the firearm; except that a muzzle-loader firearm shall  
7 be deemed to be loaded when it is capped or primed and has a  
8 powder charge and ball or shot in the barrel or cylinder.

9 (h) Nothing in this section shall prevent any person engaged in  
10 any lawful business, including a nonprofit organization, or any  
11 officer, employee, or agent authorized by that person for lawful  
12 purposes connected with that business, from having a loaded  
13 firearm within the person's place of business, or any person in  
14 lawful possession of private property from having a loaded firearm  
15 on that property.

16 (i) Nothing in this section shall prevent any person from carrying  
17 a loaded firearm in an area within an incorporated city while  
18 engaged in hunting, provided that the hunting at that place and  
19 time is not prohibited by the city council.

20 (j) (1) Nothing in this section is intended to preclude the  
21 carrying of any loaded firearm, under circumstances where it would  
22 otherwise be lawful, by a person who reasonably believes that the  
23 person or property of himself or herself or of another is in  
24 immediate, grave danger and that the carrying of the weapon is  
25 necessary for the preservation of that person or property. As used  
26 in this subdivision, "immediate" means the brief interval before  
27 and after the local law enforcement agency, when reasonably  
28 possible, has been notified of the danger and before the arrival of  
29 its assistance.

30 (2) A violation of this section is justifiable when a person who  
31 possesses a firearm reasonably believes that he or she is in grave  
32 danger because of circumstances forming the basis of a current  
33 restraining order issued by a court against another person or persons  
34 who has or have been found to pose a threat to his or her life or  
35 safety. This paragraph may not apply when the circumstances  
36 involve a mutual restraining order issued pursuant to Division 10  
37 (commencing with Section 6200) of the Family Code absent a  
38 factual finding of a specific threat to the person's life or safety. It  
39 is not the intent of the Legislature to limit, restrict, or narrow the  
40 application of current statutory or judicial authority to apply this

1 or other justifications to defendants charged with violating Section  
2 12025 or of committing other similar offenses.

3 Upon trial for violating this section, the trier of fact shall  
4 determine whether the defendant was acting out of a reasonable  
5 belief that he or she was in grave danger.

6 (k) Nothing in this section is intended to preclude the carrying  
7 of a loaded firearm by any person while engaged in the act of  
8 making or attempting to make a lawful arrest.

9 (l) Nothing in this section shall prevent any person from having  
10 a loaded weapon, if it is otherwise lawful, at his or her place of  
11 residence, including any temporary residence or campsite.

12 ~~(m) (1) The district attorney of each county shall submit~~  
13 ~~annually a report on or before June 30, to the Attorney General~~  
14 ~~consisting of profiles by race, age, gender, and ethnicity of any~~  
15 ~~person charged with a felony or a misdemeanor under this section~~  
16 ~~and any other offense charged in the same complaint, indictment,~~  
17 ~~or information.~~

18 ~~(2) The Attorney General shall submit annually, a report on or~~  
19 ~~before December 31, to the Legislature compiling all of the reports~~  
20 ~~submitted pursuant to paragraph (1).~~

21 ~~(3) This subdivision shall remain operative only until January~~  
22 ~~1, 2005.~~

23 SEC. 2. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.